

# **THE FERTILIZER LAW**

*(Act 106 of 1951 as amended by Acts 221 and 301 of 1953, Act 356 of 1957, Act 398 of 1981 and Act 189 of 1991, Act 783 of 1993, and Act 766 of 1999.)*

## **SECTION 1. (2-19-202) Registration Required for Fertilizer Brands and Materials - Licensing Required for Fertilizer Blending and Storage Facilities.**

(a) All manufacturers, jobbers and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer, who may desire to sell or offer for sale in Arkansas fertilizer and fertilizer materials, shall first file for registration with the State Plant Board, on forms furnished by the Plant Board. The forms shall include the name of the brand of each fertilizer, fertilizer materials or chemicals which they may desire to sell in the State, either by themselves or their agents, together with the names and addresses of the manufacturers or manipulators, and such other information as may be required by the Plant Board in its regulations. A registrant shall not be required to register each grade of fertilizer that is formulated but shall report the mixed formulations on a monthly basis as required by Section 4. All registrations must be approved by the Plant Board or its authorized agent before being effective. Registrations may be canceled by the Plant Board for repeated flagrant violations of this Act, after a notice and hearing.

Each commercial fertilizer registrant shall report the guaranteed analysis by net weight of each registered fertilizer brand and the name and address of the registrant. No guaranteed analysis of complete fertilizer shall be allowed indicating fractional units of primary plant food. Provided, however, raw materials may be registered under a guarantee of the actual plant food content. In the case of bone meal, the phosphoric acid content shall be stated as a total, and its actual nitrogen content shall be stated. In the case of rock phosphate, both the total and available phosphoric acid content shall be stated.

(b) All manufacturers, jobbers, blenders, and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer,

who may desire to sell or offer for sale in Arkansas fertilizer or fertilizer materials, shall first obtain a facility license from the Plant Board for each fertilizer blending and/or bulk storage facility which they operate. After notice and hearing, the Plant Board shall, by regulation, promulgate the standards and criteria which it determines are necessary to license fertilizer blending and/or bulk storage facilities.

(c) The Plant Board may, under its regulations, set and collect reasonable fertilizer brand registration and facility licensing fees. The fees shall be deposited in the State Plant Board Fund of the State Treasury. All registrations and facility licenses shall expire on June 30 of each year.

(d) Any commercial fertilizer sold must contain a minimum of twenty (20) units of primary plant food, except for the following exemptions for ***special agricultural crop fertilizer formulations*** and for ***specialty fertilizers***:

(1) Commercial fertilizers which are needed in special cases for ***special agricultural crop*** uses shall be permitted to be sold in less than the combined twenty (20) unit minimum of primary plant food elements. The special agricultural crop use fertilizers with less than the twenty (20) unit minimum shall be permitted for sale only after the fertilizer grade is registered with the Plant Board. In order to register the fertilizer grade, the applicant shall submit a written justification which shall show the need for such special fertilizer grade and shall include materials to be used in the special agricultural crop fertilizer formulation. The Plant Board or its designee shall evaluate the formulation based on criteria established by rules and regulations of said Board.

(2) A ***specialty fertilizer*** is any fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubs, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries. It may include fertilizers used for research or experimental purposes.

## **SECTION 2. (2-19-205) Each Container Must Show Analysis.**

All persons, companies, manufacturers, dealers, or agents, before selling

or offering for sale in this State complete fertilizer or fertilizer materials, shall brand, print or attach to each bag or other container a true statement giving the name and address of the manufacturer or guarantor; the net weight of the package of the other container, in pound(s); the brand name or trademark, and the guaranteed analysis; nitrogen \_\_\_\_\_%, phosphoric acid, available \_\_\_\_\_%, potash soluble in distilled water \_\_\_\_\_%, and such other information as the Plant Board may require in its regulations. It is provided, however, that this information shall be given in the invoice rather than on the container for sales of anhydrous ammonia and other fertilizers in bulk, and all the provisions of this Act which apply to statements or guarantees appearing on containers shall apply equally to information contained in the invoice.

### **SECTION 3. (2-19-206) Penalty for Deficiency.**

If any commercial fertilizer or fertilizer material offered for sale in this State shall upon official analysis prove deficient from its guarantee as stated on the bag or other container, to the extent of three per cent and not over five per cent then the manufacturer of such commercial fertilizer or fertilizer materials or his agent shall be liable for the actual deficiency as shown by the official analysis. If the deficiency is over five per cent, then the penalty will be three times the amount of the total deficiency as found by the official analysis. The penalty shall apply only to the shipment sampled. Provided, the Plant Board may in its regulations set up penalties for any guaranteed constituents found deficient beyond a reasonable tolerance.

Penalties assessed under this Section and under such regulations as may be enacted thereunder, except those exceeding the actual value of the shortages found, shall be paid to the consumer of the lot of deficient fertilizer within **thirty days** after the date of the notice from the Plant Board to the manufacturer or agent, receipts to be taken therefore and promptly forwarded to the Plant Board. The value of the deficiencies, if any, exceeding the actual shortages, and the actual value of the shortages when the consumer cannot be found, shall be paid to the Plant Board within **forty-five days** after the date of notice from the Plant Board to the manufacturer or his agent and the same shall be deposited in the Feed and Fertilizer Fund of the State Treasury.

Provided, the Plant Board shall ascertain from the manufacturers of fertilizer and fertilizer materials herein specified to be used in the manufacture of fertilizer and fertilizer materials and from the other reliable sources, the

market value of said materials, so as to fix units of value on same to be used in determining the amount of damages due when the official analysis shows a deficiency from the guaranteed analysis as specified in this Act. The Plant Board is hereby authorized to cancel the present registration or refuse to register for the next season any fertilizer or fertilizer materials offered for sale by any manufacturer, jobber or manipulator who fails or refuses to comply with this Section.

#### **SECTION 4. (2-19-209) Tonnage Must Be Reported and Inspection Fee Paid.**

All manufacturers and manipulators or agents representing them who have registered their brands in compliance with Section 1 of this Act shall forward to the State Plant Board each month a report which shall reach its office on or before the twentieth day of the month, on the forms and in the number of copies to be prescribed by the Plant Board. The report shall include a sworn statement of the total tonnage of all commercial fertilizers and fertilizer materials shipped or caused to be shipped, for sale or consumption in this State, or which have been made, mixed, manufactured or compounded in this State for sale or consumption in this State. The report shall be accompanied with the sum of One Dollar and Twenty Cents (\$1.20) per ton or fractional ton. A fee of One Dollar and Twenty Cents (\$1.20) will accompany each monthly report of tonnage which amounts to less than one (1) ton. The Plant Board shall issue receipt for the amount received and shall deposit the sums received as follows:

(a) Thirty-one cents (\$0.31) of the one dollar and twenty cents (\$1.20) per ton, or fractional ton, inspected shall be deposited with the State Treasurer as special revenues and shall be credited to the State Plant Board Fund to be used for the maintenance, operation, support and improvement of the Plant Board; and

(b) Eighty-nine cents (\$0.89) of the one dollar and twenty cents (\$1.20) fee, per ton, or fractional ton, shall be remitted to the Board of Trustees of the University of Arkansas and shall be credited to a fund known as the University of Arkansas Soil Testing and Research Fund to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment station,

branch experiment stations or sub-branch experiment stations, as determined and designated by the Vice President of Agriculture of the University of Arkansas. The Board of Trustees shall provide for the investment of any funds in the University of Arkansas Soil Testing and Research Fund that are not needed for current operations of the soil testing laboratories and soil fertility service and research activities and shall credit the interest earned on that investment to the credit of the University of Arkansas Soil Testing and Research Fund. The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the Department of Finance & Administration.

The Plant Board or its agent shall have the right at any time to inspect and/or audit the books of any manufacturer and manipulator, or its agents, to determine the correctness of the monthly reports required hereunder. Refusal to allow this inspection and/or audit shall be deemed a violation of this Act, and the violator shall be subject to the penalties provided herein. For a late report or for failure to report the entire amount sold, the tonnage fee on the late reported or unreported amount shall be enhanced by ten percent (10%) if less than fifteen (15) days late, twenty percent (20%) if less than thirty-one (31) days late, and doubled if more than thirty (30) days late.

Calculation of late fees as amended by Act 766 of 1999:

- The tonnage reports are to be filed on or before the 20<sup>th</sup> of each month.
- For a tonnage report received 1-14 days late, the reporting fee is increased by 10%.
- For a tonnage report received 15-30 days late, the reporting fee is increased by 20%.
- For a tonnage report received 31 days or more late, the fee is doubled.

All penalties received by the Arkansas State Plant Board for failure to pay or report fertilizer tonnage fees shall be remitted to the Board of Trustees of the University of Arkansas, to be credited to the "University of Arkansas Soil Testing and Research Fund"; otherwise registrations may be canceled by the Plant Board.

## **SECTION 5. (2-19-203) Sale of Unregistered Fertilizer.**

(a) It shall be unlawful for any manufacturer, individual, corporation, or company, either by themselves or agents, to sell or offer for sale in this State any fertilizer brand or fertilizer materials that have not been registered with and the registration approved by the Plant Board or its authorized representative, as required by this Act. The fact that the purchaser waives the inspection and

analysis thereof shall be no protection to the party selling or offering for sale fertilizer brands or fertilizer materials.

(b) It shall be unlawful for any manufacturers, jobbers, blenders and manipulators of commercial fertilizers and of fertilizer materials whether an individual, corporation, or company, either by themselves or by their agents, to sell or offer for sale in this State any fertilizer brand or fertilizer materials that were manufactured at an unlicensed fertilizer blending or bulk storage facility, as required by this Act.

#### **SECTION 6. (2-19-207) Sampling Fertilizers.**

The inspectors for the Plant Board shall obtain samples of fertilizer or fertilizer materials in the following manner:

- They shall draw such samples with a core instrument that shall not be less than 12 inches in length, in such a manner that will procure a representative sample from such shipments of fertilizer or fertilizer materials as they may be directed by the Plant Board or that they may find uninspected.
- They shall take samples where there are ten packages or less from every package; where there are ten or more packages, they shall take samples from ten packages, plus a sample for each additional ton, but in no case need for more than 20 packages to be sampled.
- After thoroughly mixing the samples so drawn, they shall fill a container to be approved by the Plant Board with a portion of the said mixed sample for chemical analysis or inspection.
- Accompanying samples, a report shall be made giving the name of the commodity inspected, number of packages represented by sample, the name of the manufacturer, the guaranteed analysis, the place where inspected, the date of inspection and the name of the inspector.

#### **SECTION 7. (2-19-208) Analysis of Fertilizers.**

The sample or samples of fertilizer or fertilizer materials obtained by the inspectors shall be delivered to the Plant Board, which shall deliver said sample or samples to the Chief Department Chemist, who shall make or cause to be made a complete analysis thereof. Analysis are to be made according to methods adopted by the Association of Official Agricultural Chemists. He shall file with the Plant Board his analysis and same shall be recorded as official. The said official analysis of fertilizer or fertilizer materials under the seal of said Plant Board shall be deemed prima facie evidence in any court of this State on the trial of any issue involved on the merits of such fertilizer or fertilizer materials, represented by said sample. Three copies of the official analysis shall be made: one shall be sent to

the manufacturer, one to the purchaser and one kept on file in the office of the Plant Board.

**SECTION 8. (2-19-210) Rules and Regulations: Stopping Sale.**

The Plant Board shall have authority to establish such rules and regulations in regard to the enforcement of this Act, and in regard to inspection, analysis and sale of fertilizer or fertilizer materials, that shall not be inconsistent with the provisions of the Act. The Board or its authorized representatives shall have authority to stop the sale of any fertilizer or fertilizer material when it is found in violation of this Act, or of the regulations of the Board made in accordance with this Act, or when it has reason to suspect that it is in violation of this Act or the Board's regulations.

**SECTION 9. (2-19-204) Sales to Registered Manufacturers.**

Nothing in this Act shall be construed to restrict or prohibit sales of superphosphates, or any other fertilizer materials to each other by importers, manufacturers, or manipulators, who mix materials for sale, or as preventing the free and unrestricted shipments of materials to manufacturers who have registered their brands, as required by this Act.

**SECTION 10. (2-19-201) Penalty.**

Any person selling or offering for sale any fertilizer or fertilizer materials in violation of the provisions of this Act or of the regulations made thereunder, or of a notice issued under authority of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

**SECTION 11.**

If any section or clause of this Act should be held to be invalid for any reason, such section or portions is hereby declared to be severable from the remaining portions, and said remaining portions shall remain in full force and effect.

**SECTION 12.**

Act 329 of 1947 and all laws or parts of laws in conflict herewith are hereby repealed.

## **FERTILIZER REGULATIONS**

(This issue contains all amendments through July 1, 1991)

### **REGULATION NO. 1. Records and Reports.**

**1.1** Adequate records shall be kept to indicate accurately the tonnage of commercial fertilizers distributed in this State by each manufacturer, manipulator or registrant.

**1.2** Monthly fertilizer tonnage reports are required of all registrants by the 20th of the following month even though no tonnages are distributed and/or no inspection fees are due. Manufacturers may elect not to pay the inspection fees on shipments to the account of other manufacturers whose fertilizers are registered in Arkansas, providing however that in such cases the required invoices or shipping tickets in part 1.3 of this Regulation bear a notation similar to "Arkansas inspection fee not paid - responsibility of registrant listed above".

**1.3** Each registrant shall mail a numbered invoice or shipping ticket to the State Plant Board, P.O. Box 1069, Little Rock, Arkansas 72203, within 5 days after each sale or distribution in Arkansas. The invoice or shipping ticket shall bear the following:

- (a) Date of shipment or sale.
- (b) Name and grade of fertilizer material.
- (c) Name and address of manufacturer or shipper.
- (d) Name, address and county of purchaser and/or party to whom shipment is made.
- (e) Number and weight of packages, if any, and total weight in tons for each grade and material.
- (f) Bulk and liquid shipments shall be identified on the invoice by the terms "Bulk" or "Liquid" and the total weight in tons must be given.



(g) If the shipment is to the account of a registrant, and the inspection fee responsibility is intended to be passed on to such registrant, a notation similar to "Arkansas inspection fee not paid - responsibility of the registrant listed above".

Provided that, on distributions of fertilizer on which a registrant will pay the inspection fees, the Plant Board may permit such registrants to submit in lieu of the foregoing a weekly or monthly summary listing the county, tons, form (bulk, liquid, bagged, etc.) and grade of each fertilizer so distributed. Such summary shall be submitted within five (5) days after the end of the permitted reporting period. When inspection fees are passed on to another registrant, the invoice and shipping ticket with notation requirements as given in this registration shall be complied with.

## **REGULATION NO. 2 Brand Registration and Facility License Fees.**

**2.1 Registrations.** Each fertilizer shall be registered before being offered for sale, sold or distributed in Arkansas. The application for registration shall be submitted in duplicate to the Plant Board on forms furnished by the Plant Board, and shall be accompanied by a fee of **\$25.00 per brand**. All registrations shall expire June 30 of each year. The name of any commercial fertilizer or fertilizer material shall be considered as a distinct and separate brand when differing in any aspect other than the grade or common name of the fertilizer material.

A distributor shall not be required to register any brand of fertilizer or fertilizer material which is already registered under this Act by another firm or person, provided the label is not modified in any respect.

**2.2 Licenses.** All manufacturers, jobbers, blenders and manipulators of commercial fertilizer and of fertilizer materials to be used in the manufacture of fertilizer, who may desire to sell or offer for sale in Arkansas fertilizer or fertilizer materials, shall first obtain a facility license. Application for the license will be furnished by the Plant Board, and shall be submitted in duplicate and accompanied by a fee of **\$50.00** for each fertilizer blending and/or bulk storage facility. All licenses shall expire June 30 of each year.

## **REGULATION NO. 3. Penalties for Plant Food Shortage.**

Penalties shall be assessed according to A or B as herein stated. **Provided,**

when a fertilizer is subject to a penalty under both A and B, only the larger penalty shall be assessed.

**Penalty A:** When the total nitrogen, available phosphoric acid, potash value of a fertilizer is found to be deficient from the guarantee to the extent of 3% and not over 5%, the manufacturer shall be liable for the actual deficiency. When the deficiency exceeds 5% of the total value, the penalty shall be three times the actual value of the shortage.

**Penalty B:** When either nitrogen, available phosphoric acid or potash is found deficient from the guarantee to the extent of 10% or more, the manufacturer shall be liable for the value of such shortages.

#### **REGULATION NO. 4. Penalty for Short Weight.**

When any fertilizer shipment is found to be short in net weight to the extent of 1% and not exceeding 5% of the guarantee, the manufacturer or his agent shall be liable for the value of the actual shortage. When the weight shortage exceeds 5%, the penalty shall be three times the value of the actual shortage.

#### **REGULATION NO. 5. Penalty for Other Variances.**

Deficiencies in any other constituents not listed in Regulations Nos. 3 and 4, which the registrant is required to or may guarantee, or excesses of those which are known to be harmful to plants, may be evaluated and penalties prescribed by the Plant Board or its authorized representatives.

#### **REGULATION NO. 6. Stop-Sale Orders.**

The Plant Board may issue and enforce a stop-sale order on any fertilizer found subject to a penalty under the Fertilizer Regulations, or when said fertilizer is consistently found deficient from the guaranteed claims to any appreciable extent. Fertilizers so stop-saled shall be released when the same are labeled by the manufacturer or his agent to reflect the true contents, or when the shipment is to be returned to the manufacturer for reprocessing. All costs and expenses incurred by the Plant Board in such withdrawals shall be paid by the

manufacturer to the Plant Board within 15 days after release is given.

#### **REGULATION NO. 7. Labeling of Bulk, Liquid or Dry Fertilizers.**

An invoice shall accompany each bulk fertilizer shipment and be given to the purchaser at the time of delivery. The invoice shall bear the following information:

- (a) net weight
- (b) brand name and grade
- (c) guaranteed analysis
- (d) name and address of the manufacturer
- (e) name and address of the purchaser

#### **REGULATION NO. 8. Secondary and Minor Plant Nutrients.**

When any reference or claim is made on the label for secondary and minor plant nutrients, a specific % guarantee as the element shall be given in the guaranteed analysis. The elements and the minimum amount of each that may be guaranteed shall be limited to the following, providing however that the minimum(s) may be lower for chelates of these elements upon specific authorization of the Plant Board or its authorized representatives.

<b>Element .....</b>	<b>%</b>	<b>Element.....</b>	<b>%</b>
Calcium (Ca) .....	1.00	Copper (Cu) .....	0.05
Magnesium (Mg) .....	0.50	Iron (Fe) .....	0.10
Sulfur (S) .....	1.00	Manganese (Mn) .....	0.05
Boron (B) .....	0.02	Molybdenum (Mo).....	0.0005
Chlorine (Cl) .....	0.10	Sodium (Na) .....	0.10
Cobalt (Co).....	0.0005	Zinc (Zn) .....	0.05

An additional numeral(s) referring to the guarantee of secondary or minor plant nutrients will not be permitted in conjunction with the usual N-P-K designations of a fertilizer grade.

